IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JOHDPUR

JUDGMENT

The New India Assurance Company Limited	Vs.	Smt. Ramila Devi and Others.

S.B. CIVIL MISC. APPEAL NO.117/2007
Against the award dated 21.07.2006 made by the Motor Accidents Claims Tribunal, Udaipur in Claim Case No.14/2002.

Date of Judgment :: 09th April 2007.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. Jagdish Vyas, for the appellant.
Mr. Deelip Kawadia, for the respondents Nos.1 to 4.

BY THE COURT:

This appeal under Section 173 of the Motor Vehicles Act, 1988 ('the Act') has been preferred by the insurer of the vehicle involved in accident against the award dated 21.07.2006 made by the Motor Accidents Claims Tribunal, Udaipur in Claim Case No.14/2002 questioning the quantum of loss assessed by the Tribunal in the sum of Rs.14,62,000/- on account of accidental death of Ganesh Sharma, about 40 years of age, husband of the respondent No. 1, father of the respondents Nos. 2 & 3, and son of the respondent No. 4.

This appeal was taken up for consideration on 11.01.2007 and learned counsel for the appellant pointed out

that though this appeal has been submitted questioning only the quantum of compensation awarded by the Tribunal as being highly excessive and exorbitant; but having regard to the facts and circumstances of the case and the subject matter of this appeal, apart from the amount of Rs. 25,000/- as required by Section 173 of the Act, the appellant of its own had deposited with the Tribunal further a sum of Rs.6,33,400/-, of course without prejudice to its contentions in this appeal, on a broad estimate that it would represent the principal sum of Rs.5,62,000/- and interest thereupon towards the amount of just compensation payable to the claimants. This Court found the insurer discreet in its approach in coming out with a reasonable deposit particularly when it is not its contention that no amount whatsoever is payable to the claimants. After considering the impugned award in its totality, this Court issued notices for final disposal and until further orders, execution of the impugned award against the appellant-insurer for the remaining amount was ordered to be stayed.

The respondents Nos.1 to 4, claimants, have put in appearance; learned counsel for the parties have been heard at length; and record has been scanned through.

A brief reference to the background facts may be made thus: The claimants sought compensation with the submissions that on 10.08.2001 at about 08:30 a.m., on the route from

Malpara to Dhagrandha, the victim Ganesh Sharma while proceeding on his motorcycle bearing registration No. GJ1A J 0258 was hit by the offending truck bearing registration No. GJ13 T 5119; and succumbed to the injuries on the spot. Stating the liability of the non-applicants related with the said truck, the claimants, wife, two children, and parents of the deceased submitted for quantification of compensation that he was 40 years of age and was earning about rupees twenty five thousand per month while working as a labour contractor getting about rupees twelve thousand per month from Minal Oil Mills, another rupees twelve thousand per month from Gujco Masol Company, and further rupees one thousand per month as member of Panchayat Samiti; that he was a social worker and was a member of BJP and was likely to advance further in career; and that he was the only bread-earner of the family.

The non-applicant No.3 (insurer-appellant) submitted a reply to the claim application and with general denial of the claim averments, stated that the accident did not occur for any fault or negligence on the part of the vehicle insured; and further submitted that if there be any occasion for awarding compensation, the same may be determined on the basis of the principles of contributory negligence. On the pleadings of parties, the Tribunal framed the following issues for determination of the question involved in the case,-

"(1) आया दिनांक 10-8-2001 को विपक्षी सं0 1 श्री बिलाल के द्वारा वाहन संख्या GJ13 T 5119 को गफलत व लापरवाही से चलाने के कारण श्री गणेश दुर्घटनाग्रस्त हुवा और उसके शरीर पर साधारण व गम्भीर चोटें पहुंची और उसकी मृत्यु कारित हुई ?

(2) आया प्रार्थी क्लेम में बताई गई राशि रूपया 42,50,000/- या अन्य कोई राशि प्रतिकर में विपक्षीगण से पाने का अधिकारी है और यदि हां तो विपक्षीगण किस जिम्मे व कितनी ?

(3) आया विपक्षी बीमा कम्पनी के द्वारा जवाब में उठाई गई आपत्तियों के आधार पर विपक्षी बीमा कम्पनी का कोई दायित्व नहीं है ?

(4) दादरसी ।"

In evidence, the claimants examined Smt. Ramila Devi, wife of the deceased as AW-1 and Ratan Lal Patel, alleged to be an employee with the deceased and eyewitness to the accident as AW-2; and produced documentary evidence as Exhibits 1 to 33. The non-applicants did not lead any evidence at all.

After hearing the parties, the Tribunal found in issue No.1 that the fatal accident occurred for rash and negligent driving of the truck in question and held the non-applicants liable for compensation; and after rejecting other contentions of the insurer, took up quantification of compensation in issue No.2.

The Tribunal referred to the statement of AW-1 Ramila Devi that her husband was working as a labour contractor with Gujco Masol and Minal Industry, was having his own Jyoti

Transport, and was earning Rs.25,000-30,000/- per month; that he was depositing his income in the bank and was contributing about Rs.4,000-5,000/- to the family; that he was member of Kherwara Panchayat Samiti; and has left behind the claimants with no source of income. The Tribunal also referred to the statement of AW-2 Ratan Lal Patel who alleged being in the employment of the deceased and being paid salary at Rs.5,000/- per month. According to AW-2 Ratan Lal, the deceased Ganesh Sharma was having labour contract with Minal Oil Industry, Gujco Masol Industry and Gujarat Parachlor Company Limited; had his own transport contract in the name of Jyoti Roadways; and was earning Rs.25,000-30,000/- per month.

The Tribunal referred to the documentary evidence including various tax deduction forms and PAN Card print out and the certificates including the one issued by Minal Oil & Agro Industries Pvt. Ltd. (Ex.9) that the deceased was being paid Rs.10,500-12,000/- per month as labour contractor. The Tribunal noticed that though there was no evidence in relation to the ownership of Jyoti Roadways but its bank statement Ex.31 was produced. The Tribunal also found that deceased was a member of Panchayat Samiti. The Tribunal observed that looking to all the documentary evidence available on record, it was reasonable to estimate monthly income of the

deceased at Rs.12,000/-; and deducting one-third wherefrom, took monthly loss of dependency at Rs.8,000/- leading to annual multiplicand at Rs. 96,000/-; and with application of multiplier of 15 for the deceased being in the age group of 40-45 years, assessed pecuniary loss at Rs.14,40,000/-. The Tribunal further allowed Rs.5,000/- to each of the four claimants (father of deceased expired after filing the claim application) towards non-pecuniary loss and Rs.2,000/- towards funeral expenses; and in this manner allowed compensation in the sum of Rs.14,62,000/- with interest @ 6% per annum from the date of filing of claim application after adjustment of the amount paid under no fault liability. The Tribunal directed the non-applicants to make payment within thirty days and observed that for non-payment within three months, interest would be payable at the rate of 9% per annum from the date of award.

Assailing the award aforesaid, learned counsel for the appellant strenuously contended that the Tribunal has seriously erred in putting an estimate on the monthly income of the deceased at Rs.12,000/-. According to the learned counsel, the documents produced on record by the claimants do not reflect the income of the deceased and merely on the basis of documentary evidence about deduction of tax at source or the certificate of payment of labour charges or even of bank accounts, the income of the deceased could not have been

estimated at such a higher figure of Rs.12,000/- per month. Learned counsel submitted that though the bank statements produced by the claimants show various deposits and withdrawals but it is clear that no substantial balance was ever available in the bank account of the deceased; and from such documentary evidence, the income of the deceased cannot be estimated in the range of Rs.12,000/- per month.

Per contra, learned counsel for the claimants, while supporting the award strenuously contended that from the documentary evidence produced on record particularly the certificates of tax deduction at source, it is clear that back in the year 1997-1998, a substantial amount of Rs.58,524/- was deducted by Minal Oil & Agro Industries from the payments made to the deceased only towards 2% income tax; a sum of Rs.3,529/- was deducted only for the months of April 2001 to October 2001 by Gujarat Parachor Pvt. Ltd. (Ex.24) from similar payments made to the deceased; and another Company, Gujco Masol, Mehsana has certified (vide Ex.27) that the deceased was working as a labour contractor with the said Company too; and, therefore, the estimate as put by the Tribunal cannot be said to be on the higher side. Learned counsel submitted that of course, the claimants could not produce the accounts, balance-sheets and tax returns of the deceased for the unfortunate circumstances that the deceased had his business

establishment at Mehsana (Gujarat) and the claimants were not possessed of all the documents; however, according to the learned counsel, the documents produced on record clearly indicate a vast work-field and substantial earnings of the deceased and the estimate put by the Tribunal could only be said to be rather on the lower side. Learned counsel further submitted that even from the testimony of AW-2 Ratan Lal, it is apparent that the deceased was making payment of salary of Rs.5,000/- to him and the evidence of the claimants having remained unrebutted, the Tribunal's assessment of pecuniary loss on the basis of monthly income of the deceased at Rs.12,000/- cannot be said to be highly excessive.

In this appeal, arguments were concluded on 07.03.2007 and the mater was placed for dictation of judgment. However, before the judgment was dictated, the claimants moved an application on 21.03.2007 under Order 41 Rule 27 CPC with the prayer for taking additional evidence on record. Alongwith the said application, the claimants have produced a copy of income tax return, said to have been filed by the deceased Ganesh Sharma for the accounting year 2000-2001. It has been submitted that the documents were found lying in some old record files alongwith other papers while searching for other documents; and that the documents in question are issued by competent authority and are public documents and

genuineness of the same is beyond doubt. The appellant has filed reply to the application questioning the competence of such application after arguments have already been concluded and the matter has been posted for dictation of judgment. It has also been contended that the claimants were well aware about the permanent account number of the deceased and could have obtained copy of income tax returns from the department and could have produced the same before the Tribunal; and it cannot be said that the claimants could not produce the documents before the Tribunal despite exercise of due diligence or that such evidence was not within their knowledge. The appellant has also pointed out that the document in question is incomplete one and enclosures thereto have not been filed; and has denied the assertion that the document in question is a public document.

Having considered the rival submissions and having examined the entire record, this court is clearly of opinion that the amount awarded by the Tribunal remains much in excess of just compensation admissible in this case; and hence, the impugned award deserves modification with downward revision.

It is noticed that the claimants stated in the claim application that the deceased was working as a labour contractor; and was earning Rs. 25,000/- per month consisting of Rs.12,000/- per month from Minal Oil Mill and another

Rs.12,000/- from Gujco Masol Company and Rs. 1,000/- as member of Panchayat Samiti. Wife of the deceased stated in her deposition about his additionally earning from transport business in the name of Jyoti Transport but neither any document concerning the ownership and business of said Jyoti Transport has been produced on record nor such fact has even been stated in the claim application. There is no linking evidence on record for which the statement of accounts Ex.31 and Ex.32 of the Bank of Baroda, Branch Kalol stating the name of account holder as 'Jyoti Roadways' could be co-related with the deceased in any manner; and nothing could be culled out of such statement of accounts in relation to earnings of the deceased. So far dealing of the deceased with ‘Gujco Masol’ is concerned, a certificate from Gujarat State Co-operative Marketing Federation Limited has been produced on record as Ex.27 only stating that the deceased Ganesh Lal Sharma had worked as a labour contractor with its Mehsana Unit from 01.04.1999 to 31.03.2001. No any particulars of payment from Gujco Masol have been placed on record. Ex.29 is a licence issued under Contract Labour (Regulation and Abolition) Act, 1970 only for the period 01.11.1996 to 31.01.1997. Ex.30 is a contract of Minal Oil & Agro Industries with the deceased Ganesh Lal Sharma but is not carrying any date. The clauses of the said agreement are only indicative of

the liabilities of the deceased as a labour contractor. A so-called Hindi translation of the original agreement scribed in Gujarati has been produced on record as Ex.30A but it appears that the relevant details of the work particulars and wage rates have not been stated in the translation. However, a look at the document Ex.30 shows that labour rates were around Rs.41/-. The statement of bank account of the deceased with Mehsana District Central Cooperative Bank Ltd. (Ex.26) is indicative only of transactions of deposit and withdrawals but is not indicative of any substantial balance having been left for a reasonable time in the bank; rather, the withdrawals have immediately followed the deposits. The tax deduction particulars in Form No.16A (Ex.23) and the consolidated statement for TDS (Ex.24) from Gujarat Parachlor Pvt. Ltd. only indicate that an amount of Rs.1,51,988/- was paid/credited in the account of the deceased from 07.04.2001 to 08.10.2001; and an amount of Rs.3,429/- was deducted wherefrom towards income tax. Further, the certificates of deduction of tax at source Ex.11 to Ex.22 from Minal Oil & Agro Industries are of the year 1997-1998 and their summary is contained in the document Ex.10 to the effect that an amount of Rs.58,524/- was that of the tax deducted at source. A certificate from Shree Minal Oil & Agro Industries Pvt. Ltd. has been produced on record (Ex.9) stating that monthly charges for supply of labour were paid to the victim

at Rs.10,500/- to Rs.12,000/- as per his bill.

Having gone through entire documentary evidence in relation to working of the deceased, this Court is clearly of opinion that from these documents it cannot be deduced that the deceased was earning Rs.12,000/- per month and then was contributing Rs.8,000/- per month to the claimants. With reference to such assertion on the earnings of the deceased and with the claimants having precisely stated his permanent account number, it is difficult to accept the submissions of learned counsel for the claimants that they were not in a position to produce relevant and cogent proof of income of the deceased particularly in the form of his income tax returns, computations of income, balance sheets, profit and loss accounts and related accounts books. The submission made by the learned counsel in the abstract that for want of its rebuttal, the assertion as made by the claimants on the income of the deceased ought to be accepted does not appear correct. A reasonable estimate on the income of the deceased particularly for the purpose of assessing loss for the claimants is dependant upon a variety of facts, factors and circumstances; and want of rebuttal could also be one of the circumstance relevant; yet cannot be taken decisive of the point in every case. For that matter, in a given case even an admission of the non-applicants about the income and contribution might not be taken

conclusive; because ultimately just compensation admissible in each individual case is to be assessed, considering an overall picture.

After conclusion of submissions in this case, a so-called income tax return of the deceased for the accounting year 2000-2001 has been attempted to be produced on record. Even while leaving aside the appellant's objection against receiving the same, this Court finds that neither the said document inspires confidence nor could be relied upon. The said document gives rise to more questions rather than supplying any answer. It is noticed that supporting documents necessarily required to be attached thereto like the statement of income, balance sheet, profit and loss account have not been produced. In the absence of such essentials, the said tax return remains hollow and spineless; and cannot from the basis of estimate of loss of income for the purpose of awarding compensation. Then, a discrepancy is noticed in the said tax return where the same is shown carrying signatures of deceased allegedly put on 29.06.2001 but it bears a receipt seal of the Income Tax Department, Mehsana of 18.06.2001, i.e., prior to the date of signature! Then, the said receipt seal does not bear any signature. Then, the column on an essential fact about date of birth of the deceased, quite relevant for the present purpose, is left blank in the said return. Then, in the

said document, a figure of Rs.2,08,000/- has been stated being the income from business or profession; and with no other income, tax has been calculated at Rs.26,600/- but a rebate of Rs.20,000/- has been stated and the total payable tax has been stated at Rs.6,600/- with surcharge of Rs.112/- and then, tax deducted at source has been stated at Rs.6,787/-. However, the particulars of this tax deduced at source at Rs.6,787/- are not available. It may be pointed out that the document Ex.23 states about deduction of tax at source by Gujarat Parachlor Pvt. Ltd. for the accounting year 2001-2002 and does not pertain to the period suggested in the said tax return of the accounting year 2000-2001. Viewed from any angle, the document sought to be produced in this appeal cannot be relied upon for want of supporting material; and could only be rejected as having no probative value.

Having examined the record in its totality, this Court is clearly of opinion that what the claimants have shown on record are the mere instances of transactions the deceased was entering into but the same cannot be taken in proof of his income. The transactions of the year 1997-1998 have hardly any bearing on the earnings of the deceased in and about the year 2001-2002; and, leaving aside other doubts, even if his working as labour contractor in the relevant years be accepted with reference to the document Ex.23, it merely makes out that

a sum of Rs.1,51,988/- was paid to him for the said period. However, the said being of the payment towards labour contract, it obviously consists of substantial component of labourers' wages that were required to be paid by the deceased to the concerned labourers. Similarly, from the document Ex.9 even if it be accepted that about Rs.12,000/- were being paid every month by Shree Minal Oil & Agro Industries Pvt. Ltd. for supply of labourers, such an amount could only be taken towards gross receipts that was obviously subject to the expenditure including the substantial one towards wages of the labourer concerned. The amount of Rs.1,000/- received by the deceased as member of Panchayat Samiti cannot be considered towards settled source of income resulting in loss of contribution to the claimants. The oral statement of AW-2 Ratan Lal, who had stated his occupation as an agriculturist, about payment of salary at Rs. 5,000/- per month to him by the deceased does not sound convincing nor could be relied upon for want of cogent corroborative evidence. In the overall facts and circumstances of the case, the estimate as put by the Tribunal on the income of the deceased at Rs.12,000/- per month could only be rejected as being highly excessive.

Apart from the aforesaid, despite taking such higher multiplicand at Rs.96,000/- per annum by taking loss of contribution to the claimants at Rs.8,000/- per month, the

Tribunal has not even restricted on application of multiplier and has proceeded to apply the multiplier of 15 merely with reference to the Second Schedule to the Act of 1988. Taking of excessive higher multiplicand at Rs.96,000/- and application of maximum side multiplier of 15 thereupon has resulted in assessment of pecuniary loss at a whopping Rs.14,40,000/- that sounds unrealistic and exorbitant; and not of reasonable compensation admissible in this case.

This Court is of opinion that for the purpose of assessing just and reasonable compensation in this case only two fold receipts could form the basis; one, of the average figure of payments as stated in the document Ex.24 of Gujarat Parachlor Pvt. Ltd., which shows that around Rs.25,000/- were being paid to the deceased every month for his work as a labour contractor immediately before his demise; and second, of Rs.12,000/- per month being paid to him by Shree Minal Oil & Agro Industries Pvt. Ltd. as stated to the maximum in the certificate (Ex.9). Thus, on a broad estimate, rather to the maximum, the deceased was receiving about Rs.37,000/- per month towards his bills of supplying labour to the industries concerned. Learned counsel for the insurer submitted that for a reasonable estimate on his net income, the element of profit of the deceased from out of such receipts could be taken at about 10% and not more; and they have made calculation of

reasonably allowable compensation on this basis only. However, this Court is of opinion that looking to the nature of activities the deceased was allegedly engaged in, and taking an overall picture into account, the net earnings of the deceased could be taken at about 20% of such receipts; and, thus, it would be appropriate to take average monthly income of the deceased at Rs.7,500/- for the purpose of assessing pecuniary loss.

Calculated on the aforesaid basis, taking average income of the deceased at Rs.7,500/- per month and deducting one-third wherefrom, the average loss of dependency comes to Rs.5,000/- per month leading to a multiplicand of Rs.60,000/- per annum. With substantial reduction of multiplicand from Rs.96,000/- to Rs.60,000/- per annum, multiplier in this case is not lowered down and hence, with application of multiplier of 15, pecuniary loss comes to Rs.9,00,000/-. Having regard to the facts and circumstances of the case, it appears appropriate to allow a sum of Rs.10,000/- to the wife of the deceased towards loss of consortium and Rs.5,000/- each to other three claimants towards non-pecuniary loss. Allowing further Rs.5,000/- towards funeral and other expenses and litigation costs, the claimants would be entitled for total compensation in the sum of Rs.9,30,000/-.

It is, therefore, evident that even on a liberal estimate,

where about 20% of the maximum receipts is taken towards net income of the deceased; maximum side multiplier of 15 is applied after deducting one-third; and other components of loss are also not restricted, the claimants are entitled for compensation maximum at Rs.9,30,000/- and the amount of compensation allowed by the Tribunal at Rs.14,62,000/- turns out to be highly excessive and cannot be sustained. The stipulation about enhanced rate of interest at 9% per annum from the date of award for non-payment within three months is also contrary to law and cannot be approved.

Accordingly, this appeal succeeds to the extent indicated above and is partly allowed; the impugned award dated 21.07.2006 is modified and in place of the principal amount of Rs.14,62,000/- awarded by the Tribunal, the claimants are allowed total compensation in the sum of Rs.9,30,000/-; and are allowed interest @ 6% per annum from the date of filing of the claim application, after adjustment of the amount received under no-fault liability.

It shall be required of the appellant-insurer to deposit the amount now payable under the modified award within 30 days with the Tribunal, of course after adjustment of the amount already paid/deposited. No further order as to costs of this appeal.

(DINESH MAHESHWARI), J.

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